STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 96-526

June 10, 1997

PUBLIC UTILITIES COMMISSION
Amendment of Chapter 280, Provision of Competitive Telecommunications Services

ORDER ADOPTING RULE AND STATEMENT OF FACTUAL AND POLICY BASIS

WELCH, Chairman; NUGENT and HUNT, Commissioners

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I. INTRODUCTION

In this Order, we adopt a rule that provides for a 20% reduction in the per-minute originating common line charge effective July 1, 1997.

The Telecommunications Act of 1996 fundamentally altered the foundation of telecommunications regulation. As competition rather than regulation will provide the public with greater choice in products, prices and services, it is imperative that Maine create an environment that facilitates the development of effective competition in the interexchange market.

Maine's average intrastate access rate is at least twice as high as the national average. Recognizing that this disparity disadvantages Maine's telecommunications consumers, the First Special Session of the 118th Legislature enacted P.L. 1997, c. 259, An Act to Require the Public Utilities Commission to Align Telecommunications Carrier Access Rates with Costs to Foster Economic Development and Competition throughout the State. That law enacted 35-A M.R.S.A. § 7101-B, effective 90 days after the end of the first special session of the Legislature.

This rulemaking is consistent with the new legislation and reflects the clear benefit to the public of lowering intrastate access rates to encourage competing carriers to enter the Maine market in an economically meaningful way. Competition will further the public interest by creating an environment that results in lower prices, expanded consumer choice and increased innovation.

We are not seeking further comments on other issues raised in this docket, and do not plan to revise the remainder of the access portions of Chapter 280 through this docket. This docket is therefore closed. We have today, in Docket No. 97-319, begun a proceeding to address the more comprehensive changes to access that will be required by 35-A M.R.S.A. § 7101-B.

II. BACKGROUND AND SUMMARY OF RULEMAKING

On October 24, 1996, we adopted a Notice of Rulemaking to initiate this docket. The Notice contained proposals to: (1) revise the access rate structure and access rate levels in section 8 of Chapter 280; (2) reorganize and revise the "non-access" portions of Chapter 280, i.e., sections 1-7 and 9-15; and (3) reduce the originating common line portion of the existing access rates in section 8 by 20%, without any change to the access rate structure, pending further Federal Communications

Commission (FCC) consideration of interstate access rates, as an alternative proposal to option (1).

We asked for comments on the proposals by January 9, 1997. On January 2, 1997, we extended that deadline to February 24, 1997, in response to a request by the Telephone Association of Maine (TAM).

Following our analysis of the FCC's December 24, 1996, Notice of Proposed Rulemaking on Access Reform (*CC Docket Nos. 96-262 et al*.), we issued a Revised Notice on January 15, 1997, seeking comments on the alternative reduction to access rates as well as the non-access portions of the Chapter 280 proposal by February 10, 1997 and to June 17, 1997 for other access issues (the "first proposal").

By this Order, we adopt the second and third of the proposals described above. We terminate the rulemaking as to the first proposal.

The following entities filed comments on the alternative access proposal: Telephone Association of Maine (TAM), New England Telephone and Telegraph Company d/b/a NYNEX (NYNEX), the Office of the Public Advocate (OPA), AT&T Communications (AT&T), Telephone Resellers Association (TRA), and Maine Innkeepers. The following entities filed comments on the Reorganization proposal (Part IV): TAM, NYNEX, the New England Cable Television Association (NECTA), TRA, Atlantic Cellular & Piscataqua Cellular, and Unity Cellular.

III. ALTERNATIVE ACCESS RATE REDUCTION

The commenting parties focus largely on the issues of economic gain to the State; the relationship of the alternative access rate reduction proposal to NYNEX's alternative form of regulation (AFOR); whether the wholesale access reductions will be reflected in retail toll savings; and the extent to which residential and small business customers will benefit from the proposal. Each of these issues is discussed below.

A. Economic Gains

1. Comments

The commenters generally agree that a decrease in access rates would stimulate the economy. Specifically, the Maine Innkeepers Association commented that the high cost of intrastate long distance service imposes a substantial burden on its members, and that the development of tourism is in part

hindered by these high costs. For these reasons, the Maine Innkeepers Association supports the alternative proposal.

Several of the commenters discuss the economic stimulation that would result from a general change in rate structure and cost recovery rather than from the alternative access rate reduction proposal. TAM believes that a more vigorous economy is likely to result from shifting some cost recovery to other sources which, in turn, will allow some toll rate reductions for lower-volume users.

TRA urges us to adopt the alternative proposal, pending release of federal regulations and subsequent Commission review. TRA states that consumers, the Commission, and industry will be better served by adopting the alternative access rate proposal, at least until the FCC adopts access rate reform.

2. Response

We agree that the alternative access rate reduction will likely have a positive economic impact. The comments of the Maine Innkeepers Association are also consistent with the Commission's statutory obligation to consider economic development in its decisions (35-A M.R.S.A. § 7101).

B. Alternative Form of Regulation (AFOR)

1. Comments

NYNEX states that adjustments to prospective revenues due to access rate reductions can best be achieved outside the provisions of the AFOR. NYNEX contends that the AFOR pricing provisions apply principally to NYNEX-initiated rate changes and should not curtail the Commission’s authority to implement rate revisions, provided it does so on a revenue-neutral basis. NYNEX believes that the contemplated change is an exogenous change to the AFOR.

NYNEX describes its current rate structure as inefficient and as inaccurately reflecting costs. NYNEX states that access rates are presently high due to differing regulatory priorities for recovering the non-traffic-sensitive costs of operating the public switched network; and Maine’s traditional rate design has included usage charges for toll and switched access services that are far above incremental cost in order to keep basic residential rates low.

While supporting an access rate reduction in principle, NYNEX asserts that this reduction requires us to

offset any revenue loss through an increase in NYNEX's non-access rates. NYNEX proposes several rate increase scenarios for us to consider.

NYNEX estimates that a 20% access rate reduction will decrease its access revenue by $5.3 million. NYNEX projects revenue from retail toll revenue to decrease $21.7 million, resulting from toll reductions as a result of competitive pressure; this amount is approximately 16.5% of total toll revenue. TAM states that a 13.3% loss in overall access rate revenues would occur in a "demonstration-case" sample of six independent local exchange carriers (LECs) employing volumes and time-of-day calling patterns.

NYNEX seeks flat per-line recovery of its alleged lost revenues from originating access rate reductions and subsequent toll reductions resulting from competitive pressure. NYNEX states that this recovery should come from an increase in basic charges to residential customers at a level of $4.93/month, arguing that business rates are already more than double residential rates and that a goal should be to remove inter-service subsidies. (TAM alleges it will require an average increase of $3.10/month for all classes of customers). NYNEX notes that FCC default TELRIC proxy loop costs for Maine are approximately $18.69 with no switching or local usage involved; it asserts, based on this calculation, that basic charges are not meeting their FCC TELRIC proxy loop costs.

NYNEX asserts that a portion of the lost revenues must be assigned to the independent LECs and their customers, but does not elaborate. Because of the nature of settlements contracts, TAM expects only minor financial impact from the alternative access rate reduction.

According to NYNEX, the rate increases that would occur under the AFOR, assuming 2.5% inflation, would allow NYNEX to raise rates by $19.8 million to offset its estimate of a $27 million combined loss in access revenues and, as a result of competition, in toll revenues. NYNEX notes that difficulties could arise in raising basic rates (a core non-discretionary service) by amounts greater than the 5.6% that it has decided would be allotted under its interpretation of the AFOR formula (NYNEX employs a projected revenue deficiency as an exogenous change of 7.6% and assumes inflation at 2.5%) and recommends that we adopt a methodology that would allow NYNEX to increase rates by the full $27 million that it seeks.

TAM states that NYNEX could either be expected to recover revenues from a Subscriber Line Charge or increased basic

rates. Regardless of the methods employed in any potential recovery, TAM states that the changes produced will lead to a more optimal rate structure for telecommunications services provided in Maine.

2. Response

We will not allow NYNEX to increase rates beyond any increases allowed under the AFOR at this time. An increase to retail rates is beyond the scope of this rulemaking as defined in the Notice. *See* 5 M.R.S.A. § 8053(3)(d). Moreover, while we order the access rate reduction outside of the AFOR, that does not make the change exogenous under the terms of the AFOR. No commenter has adequately defined the scope of any revenue shortfall resulting from the access rate reduction, and we will therefore not adjust rates at this time.

On May 15, 1995, we adopted an AFOR to regulate the Maine intrastate operations of NYNEX, for the 5-year period beginning on December 1, 1995, and ending on that date in the year 2000. *Maine Public Utilities Commission, Investigation Into Regulatory Alternatives for the New England Telephone and Telegraph Company d/b/a NYNEX*, Docket No. 94-123, Order at 1 (May 15, 1995). The AFOR includes a price cap structure and a pricing rule that applies to all of NYNEX's "core" services. Core services are categorized as non-discretionary services (e.g., basic exchange, toll services) and discretionary services (e.g., existing Custom Calling, Phonesmart services, and special contracts to customers with options). Order, Docket No. 94-123 at 56-62.

The overall price rule for core service is the Price Regulation Index (PRI). The PRI is based on a formula that determines the amount by which NYNEX can adjust annually the aggregate weighted level of all its prices for core services to reflect cost changes caused by inflation, offset by the growth in productivity and by changes in a very limited group of exogenous costs. The inflation factor of the formula is the Gross Domestic Product Price Index (GDP-PI), which is designed to measure changes in national output prices. The productivity factor is set at 4.5%. Order, Docket No. 94-123 at 45-53.

Under the AFOR, any price increase for a non-discretionary core service (primarily basic service and toll) is limited to the increase in the aggregated PRI. NYNEX may change the price of any particular discretionary core service, but revenues from all core services will be subject to the PRI. NYNEX may raise the prices for core services only at the time of

its annual rate adjustments, while it may decrease the price of any service at any time.

The AFOR does not include a profit-sharing component and its "exogenous change" component is only for those exogenous cost changes that: (1) have a very substantial and plainly disproportionate effect on NYNEX's costs and that are totally outside the control of NYNEX; or (2) are jurisdictional separations changes and significant accounting changes mandated by regulatory agencies that apply only to NYNEX or the telecommunications industry. Order, Docket No. 94-123, at 55.

The NYNEX AFOR was designed to replace rate-of-return regulation. Order, Docket No. 94-123, at 2-6. Both rate-of-return regulation and the AFOR are methods of adjusting NYNEX's revenue requirement, which is a function of NYNEX's investment and its costs. Accordingly, all of the adjustments to the revenues allowed under the AFOR are related to items that impact NYNEX's cost of providing service. Exogenous costs are one kind of cost included in the AFOR formula. Because changes in access revenues are not cost changes, they are by definition not exogenous costs.

Changes in access rates may affect NYNEX's revenue and its earnings. However, the fact that the access rate reduction affects earnings does not make the reduction an exogenous cost. The AFOR does not permit NYNEX to flow through revenue losses as exogenous automatically.

If NYNEX believes that it is legally entitled to increase rates beyond the levels permitted in the AFOR as a result of the access rate reduction, NYNEX bears the responsibility to demonstrate that entitlement to the Commission. NYNEX's comments submitted in this docket fall far short of that demonstration, failing to mention effects as basic as network usage stimulation.[1]

C. Access Reductions Passed on to Consumers

1. Comments

NYNEX asserts that access rate reductions would not be passed on by wholesalers to consumers and should instead be mandated by the Commission. TAM also asks that we order an

[1]In the Order Initiating Rulemaking and Notice of Inquiry issued in Docket No. 97-319 (June 4, 1997) we have outlined on pages 11 and 12 other suggested factors that NYNEX should consider quantifying for such a showing.

access rate dollar-for-retail-dollar reduction in prices to end users.

2. Response

Where effective competition exists, we expect that the market will act to ensure that access rate reductions will be reflected in retail rates. Based on various public comments, and on representations by AT&T and MCI before the Maine Legislature, we fully expect that at least some of the larger carriers will directly and immediately pass their entire share of this access rate reduction through to consumers. Based in part on these representations, we are not ordering any retail changes by NYNEX or any other carrier; but expect that competitive pressures will have that effect.

D. Residential and Small Business Savings

1. Comments

TAM asks that we consider the bills of low-volume residential toll customers as well as those of lower-volume business customers in any re-adjustment of rates. OPA believes that we should pass toll savings on to residential ratepayers as well as small businesses because both classes of customers have been unfairly excluded from the market benefits that are available to larger customers.

AT&T states that the proposal to reduce the originating common line access element by 20% would: (1) have no effect on large business users who typically use dedicated access for outgoing calls; (2) only marginally affect the smaller business user; and (3) still leave Maine with by far the highest access rates of any state in the nation.

2. Response

Focusing the reduction on the originating access element will benefit both lower volume business customers and residential customers. Small business customers will realize economic gains not only through lower toll rates, but also through an increase of incoming calls caused by residential stimulation.

We agree with AT&T that it is possible that high-volume business users will not realize reductions in their telecommunications costs as a result of the proposal. We also agree with AT&T's position that the originating common line charge reduction of 20% will still leave Maine with the highest

access rates in the country. The lowered access rates, however, will be closer to the national average than at present. This is an appropriate first step in bringing Maine's intraLATA access rate levels to interstate levels or lower before May 30, 1999.

E. Conclusion

For the reasons stated, we adopt the alternative access rate proposal to reduce the originating common line charge by 20% as a new subsection K of section 8. As discussed above, we do not adopt any other changes to section 8 and subsections A through J, therefore, are unchanged.

IV. REORGANIZATION OF CHAPTER 280, SECTIONS 1-7 AND 9-15

A. Summary and Disposition Table

We have reorganized the non-access portions of Chapter 280 (all sections other than section 8) to provide a more logical order of sections and to make the chapter easier to understand and use. Whole and partial sections have been moved and rearranged. Some whole and partial sections have been eliminated. The following table summarizes the reorganization and other changes to sections 1-7 and 9-15 of the rule.

Current §/sub-§	Title/Subject Matter	New §/sub-§	Title/Subject Matter	Changes
1	Purpose	1	Purpose	revised
2	Definitions	2	Definitions	substantial changes
3	Applicability	3	Applicability	no substantive changes.
4	Approval required	4	Approval for providing competitive services	reorganized; simplified; informational requirements deleted and added
5	Interexchange competition	various	see below	see below
5.A.	General	----	----	eliminated as superfluous
5.B.	Continued authority contingent on payment of access	8(A)		no change
5.B.	Blocking of authorized service; charge for unauthorized service	7	same	no change
5.C(1)	Requirement for ILECs to provide facilities for competitors	6	same	no major substantive change

6	Joint planning for provision of interexchange facilities	----	----	eliminated from Chapter 280
7	Open service/network architecture	5	open network architecture; availability of services and network elements	some reorganization; procedures modified; some substantive changes
9	Charge for OSNA	----	----	eliminated
10	Rate schedules filed by competitive providers	9	same	exemption from active regulation stated
----	----	10	notice to customers of rate increase	new
11	Commission review of LEC decisions	14	Commission review	minor, non-substantive changes
12	Reports	11	reports and records	exempts IXPs from annual report requirement
----	----	12	waiver of §§ 707, 708; notice	new
13	Discontinuance of service; approval required	13	applicability of other statutes	adds references to other statutory approval requirements applicable to all telephone utilities
14	Waiver	15	waiver of provisions of rule	no change

B. Discussion of Proposed Changes to Each Section

§ 1 Purpose

We proposed to modify the purpose of this section to reflect the purposes of the rule consistent with our proposed substantive revisions, including the access charge structure proposals in section 8. TAM objects to our proposal on the ground that:

> The proposed language anticipates objectives and policy designs not yet considered or resolved in this proceeding. The proposed qualification suggesting that charges are to be established on an "economically efficient and equitable" basis must await resolution of the fundamental issue of pricing. The "access to facilities" phrase must also await resolution later and presents issues, as

> explained below, that may or may not be consistent with federal law.

TAM Comments at 8.

> We had proposed:
>
> > The purposes of this Chapter are to *establish economically efficient and equitable access charges for the provision of competitive services*; to establish the conditions in which competition may occur, *including access to the facilities of existing telecommunications providers*; and to describe the process for intrastate competitive telecommunications providers to obtain authority from the Commission to provide service.

(italics added).

TAM proposes to eliminate the first italicized phrase and replace it with the words "establish charges for the provision of access services." TAM, along with NECTA, also proposes to delete the second italicized phrase.

We do not agree with TAM's first comment. Although we are not adopting access structure reform in this rulemaking, our adoption of the 20% proposal and the language of previous section 1 ("to create a process whereby certain intrastate telecommunications services may be made available to Maine telecommunications customers on a competitive basis"), both indicate that it is the purpose of this chapter to establish "economically efficient and equitable access charges for the provision of competitive services."

We will, however, delete the phrase "including access to the facilities of existing telecommunications providers." TAM apparently objects to this phrase on the ground (expressed more fully in its comments on section 5) that it is premature for this Commission to state a general policy that competitive telecommunications providers should have access to the facilities of rural telephone companies while the "rural exemption" enacted by Congress in the Telecommunications Act of 1996 still is in effect in Maine.[2] Although TAM does not object to the phrase "establish the conditions in which competition may occur," we also remove that phrase.

[2]As discussed below, we have limited the applicability of section 5 to retail and to interexchange wholesale services.

§ 2 Definitions

This section contains several new or several revised definitions for interexchange carriers and various types of local telecommunications providers. These are necessary in part because we have expanded section 4 to apply to the certification process for the provision of local service. The number of definitions has been reduced from the proposed rule, however, because of the elimination of those substantive provisions of the proposed rule that would have applied to various classifications of telecommunications providers. We describe here the various categories from most to least inclusive.

"Telecommunications provider" (§2(R)) is the most inclusive category. It includes all of the categories described elsewhere in the section, i.e., all interexchange and local exchange providers. It also includes entities that are public utilities and those that are not, but which nevertheless must pay access charges pursuant to this rule.

On the interexchange side, we define only "interexchange carrier" (§2(F)). It specifically includes local exchange carriers that also provide interexchange services. The definition includes interexchange carriers (IXCs) that are facilities-based, i.e., those that provide interexchange service using their own facilities, and entities (commonly known as "switchless resellers") that have no switching capability of their own and simply resell the services of a facilities-based IXC or another switchless reseller. As recognized in the definition, some IXCs may not be public utilities as defined by Maine law; nevertheless, all IXCs that provide retail intrastate service are subject to the access payment requirements of section 8.

With regard to the provision of local service, the broadest category of providers is "a local exchange carrier" (LEC) (§2(J)). Within that category are "incumbent local exchange carriers" and "competitive local exchange carriers." "Incumbent local exchange carriers" (ILECs) (§2(E)) are those LECs that were providing service on February 8, 1996, the effective date of the federal Telecommunications Act of 1996. In Maine, the incumbent LECs are New England Telephone and Telegraph Company d/b/a NYNEX and the 23 independent telephone companies (ITCs) that were providing local exchange service on that date. "Competitive local exchange carriers" (CLECs) (§2(C)) are defined as those local exchange carriers that are not ILECs. Within that category are CLECs that provide service using facilities they control (either by owning or leasing them), by purchasing

unbundled network elements from an ILEC, or by purchasing local service (bundled) from an ILEC at a wholesale rate that reflects the difference between the ILECs' retail rate and the costs the ILEC avoids by not providing the service at retail. A CLEC that owns or controls facilities (including by a lease) is capable of providing interexchange access services to IXCs. Because CLECs that only purchase from a wholesale tariff of an ILEC have no facilities; they therefore are not capable of providing interexchange access.

We proposed a section 2(D) that would define "Forward-Looking Economic Cost," the basis for pricing of the access rates contained in proposed section 8(B) of the rule. Included within the proposed definition were the two major components of forward-looking economic cost: definitions of "Total Element Long Run Incremental Cost" (TELRIC) of a network element or facility, and "Reasonable Allocation of Forward-Looking Common Costs." The proposed definition was intended to be substantively identical to that recently adopted by the Federal Communications Commission for local interconnection. For the time being, we have no need for such a definition, either for interexchange access or for local interconnection. We therefore will not adopt a "forward-looking cost" definition at this time. We note that the Eighth Circuit Court of Appeals stayed the FCC definition pending appeal of the FCC's interconnection order.

Several other new definitions are included in section 2. These include: common line, interexchange access, loop and operator services. Those definitions are used in various places in the rule and require no further explanation here.

§ 3 Applicability

We proposed in section 3(A) to expand the applicability of this Chapter to all competitive telecommunications services. At present, the rule applies only to interexchange services. TAM supports this proposal; no commenter objects. We adopt it. We also proposed that subsection (B) would restate, without modification, the fact that the rule does not apply to the provision of local service by customer-owned coin-operated telephone (COCOT) providers. The certification and provision of local service by COCOTs is addressed in Chapter 250. We also adopt subsection B.

Atlantic Cellular Telephone Corporation and Piscataqua Cellular Telephone Corporation filed comments that make clear that the FCC *Interconnection Order* in CC Docket No.

96-68 and CC Docket No. 95-185 at ¶ 1036 ruled that CMRS (Commercial Mobile Radio Service) providers (which include cellular providers) are exempt from both federal and state access charges, and instead are subject to interconnection charges under the process described in the Telecommunications Act of 1996, 47 U.S.C. §§ 251-253, where their traffic is within a single Major Trading Area (MTA). All of Maine intrastate traffic is within a single MTA (Number 5: Boston-Providence). We agree that present subject matter of Chapter 280 has no applicability to CMRS providers and have provided a further exemption in new subsection (C) of section 3.[3]

§ 4 Approval Required

In conjunction with the change to section 3 (Applicability), we proposed that section 4 apply to applications for competitive local exchange service as well as to applications for competitive interexchange service. No commenter opposed this proposal and we adopt it.

As in the former rule, subsection A describes the findings that the Commission must make in order to grant a certificate of public convenience and necessity pursuant to 35-A M.R.S.A. §§ 2102 and 2105(A). Subsection B (approval for additional service or service area) simply restates the requirement formerly contained in the last paragraph of former subsection A, but we have added a statement that the information requirements of the remainder of section 4 will not apply if the applicant has received prior authority to provide other services, unless updating of the information is necessary. Subsection C (formerly subsection B) describes the contents of a prospective telecommunication provider's application to provide service.

We have eliminated or simplified some of the findings required by former subsection A, consistent with the nature of a competitive market. In subsection C (former subsection B), we eliminate some information requirements, as that information is unnecessary for the processing of the applications to provide service, for the findings of subsection A, or for the needs of a competitive market. These include: the procedural provisions in paragraph A(1) concerning the need to file certain material if it is already on file (this provision has not been used); a provision in former subsection 2 that required the Administrative Director to determine the adequacy of an application (the matter is handled informally);

[3]Both the entry by and retail rates of CMRS providers are deregulated under Maine law. 35-A M.R.S.A. § 102(13). Therefore, the provisions of section 4, governing entry, have no applicability.

statements concerning facilities that the applicant intends to use (some of these requirements are retained only for applicants intending to use access other than Feature Group D); and financial reports.

The revision also modifies certain information requirements and adds requirements that the applicant provide information concerning any investigations that are pending in other jurisdictions and a statement of any intent to offer operator services.

We have continued the requirement that an IXC must provide a description of any proposed facilities and services, other than Feature Group D, that it will use. That requirement is necessary because carriers often use Feature Group A and Feature Group B facilities and special access and private line facilities for mixed interstate and intrastate traffic. A LEC providing Feature Group D service is able to measure interstate and intrastate traffic, but is not able to do so for other means of access. For those other means, reporting of and payment for intrastate usage essentially relies on the representations of the interexchange provider, tested where circumstances warrant by audits.

§ 5 Availability of Services and Facilities

Section 5 is similar to present section 7 (Open Service Network Architecture). Section 5 describes a process by which other telecommunications providers, customers, or any other person may request retail or wholesale access services or facilities from any local exchange carrier. If the LEC will not or cannot provide the requested service, access or element, section 5 describes a further process by which the requester may obtain review of that decision by the Commission staff and, ultimately, the Commission.

We have reorganized some portions of former section 7 and have made one substantive change. The rule now states that any request made for a service, access or a network element to any telephone utility managerial, marketing or business office personnel will be considered a request under this section and will potentially initiate the processes under this section.

We also proposed two substantive changes that we now reject. We proposed expansions of the type of services or facilities that persons may request and of the entities to whom they may make those requests. We proposed, consistent with the Telecommunications Act of 1996 and the evolution of policy

generally, that a person may request "network functions or elements, including the unbundling thereof," in addition to the items named in the present rule. Comments filed by TAM, the Telecommunications Resellers Association (TRA), and New England Cable Television Association (NECTA) convinced us not to adopt a rule that overlaps with provisions of the Telecommunications Act of 1996 that govern the process for obtaining interconnection for local service between ILECs and others. We therefore have retained the present language (transferred from section 7(A) to section 5(A)). We do not intend that section 5 should apply to local interconnection requests.[4]

We had also proposed to expand the rule so that persons might request services or facilities from any telecommunications provider subject to the jurisdiction of the Commission; the current rule allows persons to make requests only to LECs. We retain that limitation. At this time, we see no demonstrated need to apply this procedural provision to interexchange carriers, although that may be necessary in the future.

§6 A. Former Section 6: Joint Planning for Provision of Interexchange Facilities

As proposed, we have deleted former section 6. Its requirements for joint planning among competitors or potential competitors were arguably inconsistent with a competitive market. Moreover, the provision was used sparingly, despite the fact that LECs have generally complied with the requirements to provide notice of construction plans to other LECs and to larger interexchange carriers. By eliminating this section in its present form, we do not indicate any lesser concern about planning for adequate network facilities or service quality. Recent experience has shown that the modern fiber-optic network is somewhat fragile; motor vehicle accidents may result in major network outages for extended periods of time. Recent

[4]TAM also expressed concern that the proposed broader provision fails to recognize the rural exemption under 47 U.S.C. § 251(f)(1). Under that provision, rural ILECs (which include all of Maine's independent telephone companies) are exempt from any requirement to interconnect with CLECs, unless this Commission terminates the exemption pursuant to section 251(f)(1)(B). The rural exception, as controlling federal law, would apply regardless of language contained in the rule and could serve as a reason under section 5 for declining to supply a requested service or network element. Nevertheless, our narrowing of the applicability of this section to services and facilities not governed by the interconnection provisions of the TelAct obviates the concern raised by TAM.

events of this type may demonstrate the need for greater network redundancy (parallel and back-up routes) and better network planning.

Former section 6 might not have been adequate to address current or future situations in any event. For example, it addressed only joint planning and not planning by a single utility. Accordingly, while we have repealed former section 6, we intend to continue our vigilance of service quality, both through the service quality mechanism contained in the current alternative form of regulation (AFOR) for NYNEX and otherwise.

TAM supports repeal of former section 6. No other commenter addressed the issue.

B. New Section 6: Provision of Facilities by Local Exchange Carriers

This section is moved from former section 5, subsections C and D. We proposed two substantive changes that we do not adopt.

The first proposed change would have amended former section 5(C)(1) (now sections 6(A) and 6(B)(1)) to expand its applicability to include requests for local interconnection. We did not describe or discuss that proposed expansion in the Notice.

NYNEX, TAM, TRA and NECTA commented on this proposed expansion, and suggested that it may be redundant with or even conflict with provisions of the Telecommunications Act of 1996 that govern interconnection.[5]

For the same reason that we have limited new section 5 to its former applicability (in former section 7), we also limit subsections (A) and (B)(1) of this section.

TRA's comments further opposed subsection (B)(1) on the ground that it would allow LECs to avoid providing facilities to competitors in a timely fashion. TRA's comments

[5]TAM notes, however, that "nothing in TA96 necessarily affects the provision of access services for the origination and termination of toll calls," and that we previously had noted that "the Telecommunications Act . . . does not establish pricing guidelines for intrastate interexchange competition access charges." *Inquiry Into the Provision of Competitive Telecommunications Services (Chapter 280)*, Docket No. 94-114, Order at 7 n. 11 (June 25, 1996).

suggest that it believes that section 5 is a new proposal rather than an amendment. We are retaining the current provision, limited to requests for interexchange facilities.

NECTA specifically opposed the applicability of this section to CLECs, at least to the extent that the section might impose obligations that, under the TelAct (specifically 47 U.S.C. § 251(c)) apply only to ILECs. NECTA points out that the FCC, in 47 C.F.R. § 51.223, ruled that states could not impose section 251(c) requirements on non-ILECs. Our limitation of requests under this section to the narrow category of interexchange access services or facilities contained in the present rule obviates the concern raised by NECTA. This section has always applied to LECs and we see no reason why it should not apply to CLECs. In any event, to the extent any obligation placed on CLECs might be construed as a section 251(c) requirement, a CLEC could claim that under federal law it was exempt from this section.

The second proposed change would have amended former section 5(C)(2) (now moved to section 6(B)(2)). That provision states that if an IXC plans to offer "competitive services from an exchange which has Extended Area Service (EAS) calling to another exchange," it is required to obtain Feature Group D access from the LEC; if Feature Group D access is not available, the IXC must pay a reasonable portion of the LEC's capital costs. The Notice proposed to expand the applicability of that provision to any increase in traffic that might require additional capital investment by a LEC (or other provider) and to apply the provision to any carrier (not only IXCs) that might cause that need. The comments of NYNEX, TAM, TRA and NECTA did not address the proposed expansion to apply to any kind of traffic.[6]

As in the case of section 5 discussed above, we do not see a need for expansion, and we do not believe the proposal has been sufficiently explored or addressed in this proceeding. The present rule applies to the narrow circumstance of interexchange of interexchange traffic between two exchanges that have extended area service (EAS) between them, and the capital requirement applies only when Feature Group D access is not available, presently a rare circumstance.

We are aware that other providers may generate increased traffic that may require LECs to increase

[6]Their comments that addressed the expansion of subsections (A) and (B)(1) to other entities could be viewed as opposing the similar proposed expansions in this provision (subsection (B)(2)).

switching and transport investment, and that the issue of who should pay for the additional costs exists. We do not believe the issue was sufficiently addressed or explored in this proceeding.[7] Accordingly, we retain the present language concerning applicability.

§ 7 Unauthorized Interexchange Service; Blocking of Unauthorized Traffic

Section 7 is essentially identical to the former section 5(B) that requires blocking of unauthorized intrastate traffic. In the Notice, we proposed to move two portions of section 5(B) to a new proposed provision in section 8. The first states the requirement that IXCs must pay access charges as a condition of providing service. The second addresses the rate that unauthorized providers of intrastate interexchange service must pay when their traffic is not or can not be blocked, to a new provision in section 8. We are not making any changes to section 8 other than adding new subsection K that requires a reduction in the common line charge by 20%. We therefore have retained both of the two existing provision (from former section 5(B)) described above in this section.

§ 9 A. Present Section 9: Charges for Open Service/Network Architecture

We have eliminated former section 9. Section 9 described the rate for services that might arise out of the process contained in section 5 (previously section 7). While we have retained the process in section 5 by which customers and telecommunication providers may request particular services, network functions and elements, and access to the network, it is no longer necessary to prescribe a rate. Pricing should instead be left for the tariff and special contract processes. TAM supports the elimination of this provision.

B. Future Section 9 - Reserved: Local Interconnection Charges

We proposed to include a "**RESERVED**" section 9 for a future provision addressing charges or rates for local interconnection. TAM objected to the "proposed 'reservation' because such action prejudices future proceedings with the conclusion that rates for local interconnection charges are

[7]Although the Notice and the attached proposed rule clearly described the proposed language, the Notice gave little emphasis to the fact that the proposal would result in a major expansion of applicability and did not state reasons for the proposed change.

needed and should be adopted." We intended to reserve a location for the interconnection provision only if it was necessary; we did not intend to create any presumption. Nevertheless, we have had one major arbitration case (between NYNEX and AT&T in Docket No. 96-510) and, since that time, a number of negotiated agreements between NYNEX and various potential CLECs. We therefore believe that it is not necessary at this time to anticipate the need for a rule on this subject and therefore eliminate Future Section 9 - Reserved.

C. Schedule Filings by Interexchange Providers; Changes in Rates

New section 9[8] contains three subsections. Subsections A and B are essentially identical to subsections A and B of former section 10. (In the Notice, these provisions were numbered § 10.A and 10.C, respectively.)

Subsection C of section 9 is new. (In the Notice, it was numbered § 10(E).) Subsection C states that interexchange providers, other than ILECs, shall be exempt from various filing requirements that apply to ILECs when ILECs file proposed rate changes that are defined by 35-A M.R.S.A. § 307 as a "general rate case" (an overall increase in rates of more than one percent). A similar exemption is contained in Chapter 110, § 711 (Rules of Practice and Procedure). We adopt this policy because we find that rates for interexchange services provided by interexchange carriers (IXCs) -- at least IXCs other than ILECs -- are subject to competitive market forces. Because IXCs (other than the ILECs) in Maine are clearly "price takers," and have no ability to sustain prices above competitive levels relative to NYNEX, we find that the interexchange rates provided by the IXCs (other than the ILECs) will be "just and reasonable" and do not require our active review.

Accordingly, although the interexchange rates of IXCs that are subject to the jurisdiction of the Commission are subject to the suspension and investigation provisions of 35-A M.R.S.A. § 310, the Commission ordinarily will not exercise those powers when IXCs other than ILECs propose to change their interexchange rates. We stress, however, that we have reached no conclusion in this docket concerning the level of competition for interexchange services offered by ILECs. It seems likely, for example, that once IntraLata presubscription ("ILP") is implemented, and access rates are lowered to levels that make Maine an attractive market for IXCs, retail interexchange offerings by ILECs will also be sufficiently subject to effective

[8] *See* discussion of former section 9 and the unadopted "reserved" section 9 above.

competition to require a substantial lightening, if not withdrawal, of our regulatory grasp. We intend to address this issue soon in another proceeding.

The Notice contained two further subsections (10.B and 10.D) that we do not adopt. Section 10(B) was related directly to the provisions contained in the proposed access charge restructuring section 8. Because we are not ordering access restructuring, this provision is unnecessary.

Proposed section 10(D) contained a finding, similar to the discussion above, concerning the nature of competitive interexchange telecommunications services and concluding that a lesser degree of price regulation is necessary for IXPs other than ILECs. We do not believe that such a finding belongs in a prescriptive rule, and, accordingly, it is instead included in this Order. The discussion above is similar to statements that we have been including in virtually every certificate of public convenience and necessity that we have issued for interexchange providers.

TAM argues that we should not adopt "any changes" to this section at this time. TAM's specific comments, however, addresses only those subsections that are related to the access structure proposal in section 8 that we did not adopt. As noted above, we do not adopt those subsections here. As also discussed above, subsections A and B are carried over from the former rule. Subsection C is derived, without substantive change, from Chapter 110, § 711.

§ 10 Notice By All Interexchange Providers Prior to Effective Date of Rate Increases

In the Notice this section was numbered § 11. There is no prior equivalent to new section 10. As indicated in the discussion of section 9(C) above, we do not require interexchange carriers, other than ILECs, to provide the Commission with advance notice of the filing of a general rate case, to provide advance notice to customers of the filing of a rate case, or to file prefiled testimony and exhibits. Notice to IXC customers in that context is relatively meaningless because the Commission generally does not suspend and investigate the proposed rates.

Nevertheless, based on recent experience with at least one carrier, we believe that it is important that customers receive notice of actual approved rate increases sufficiently in advance of the effective date to allow the customers to consider alternatives. Under Chapter 110, § 718, an ILEC or other utility

that proceeds through an entire litigated rate case must provide customers with direct notice of the rates that are finally approved by the Commission. Consumption of many utility services, including interexchange toll services, differs from that of most other goods and services, in that the consumer is likely to use the service before receiving a bill, and is therefore not likely to know of any price change at the time of consumption.

Section 11 therefore requires notice of at least 15 days prior to the effective date of any rate increase that is 20% or more. TAM supports this proposal "for its obvious public interest purpose." TAM also recommends that the rule "be further clarified to specify that the percent rate increase calculation for purposes of determining whether the 20% threshold is reached should be a cumulative percent over an appropriate time period, perhaps over a year." We have adopted the proposal as well as TAM's proposed amendment.

We note, however, that another rulemaking is pending on this and other issues in *Public Utilities Commission, Proposed Rulemaking, Disclosing of Low Cost Telephone Calling Plans to Telephone Customers*, Docket No. 97-155. In addition, the question of the extent to which telecommunications carriers must notify customers of rate changes is a question posed in our Inquiry in *Public Utilities Commission, Inquiry Into Telecommunications Service Standards,* Docket No. 97-192. It may be necessary in either one of those proceedings to reconsider the provision we have adopted here.

§ 11 Reports and Records

In the Notice, this section was numbered § 12. New section 11 addresses the same subject matter as former section 12 but makes one major modification. Former subsection A required all telecommunications providers to file a detailed annual financial report with the Commission. Nevertheless, in all of our orders issued pursuant to 35-A M.R.S.A. § 2102 that have granted operating authority to individual competitive interexchange carriers, we have waived that requirement. We codify that practice in the rule. Thus, all telecommunications carriers, except ILECs, will be exempt from the annual report and other accounting requirements of Chapter 210 (Uniform System of Accounts for Telephone Utilities), but must continue to report annual revenues and revenues derived from resale so that the Commission may properly bill its annual assessment to each utility. Subsection B is essentially the same as subsection B of former section 12, but is somewhat more specific about the records that an interexchange provider must retain.

TAM concurs with the proposed change to subsection A that exempted non-ILEC IXCs from a requirement of filing full annual reports. TAM also suggests, however, that "the existing filing burden imposed on LECs should also be reduced." We proposed only to codify an existing practice regarding non-ILEC IXCs, which we can implement either in individual orders (as has been our practice) or in a rule. TAM's suggestion for relaxing many of the annual filing requirements for ILECs goes beyond the scope of the proposal and the Notice of Rulemaking and cannot be considered at this time.

§ 12 Waiver of 35-A M.R.S.A. §§ 707 and 708; Notice Requirement

This section is new. In the Notice it was numbered § 13. In our orders granting approval for interexchange service, we have exempted all competitive interexchange providers from the requirements of sections 707 and 708 reorganizations of utilities and contracts with affiliated interests. We codify those exemptions in this rule. Interexchange providers must still provide notice to the Commission of those reorganizations that actually affect the structure of the public utility itself or of its immediate owners. Mergers and changes in ownership appear to occur very frequently in the telecommunications industry, and we have had some difficulty in determining the identity of current interexchange providers. Subsection C also requires the utilities that receive an exemption to provide notice of any name change or change of the person(s) whom the Commission should contact to discuss proposed tariff changes and other regulatory matters.

TAM concurs with the proposed section. TAM also suggests, however, that the Commission adopt an "automatic approval" provision that might use "standard conditions" for sections 707 and 708 approval requests by telephone utilities not subject to the exemption. We proposed only to codify an existing practice regarding non-ILEC IXCs, which we can implement either in individual orders (as has been our practice) or in a rule. TAM's proposal goes beyond the scope of the proposal and the Notice of Rulemaking and we are not able to consider it in this rulemaking. However, we may consider it in a future rulemaking.

§ 13 Applicability of Other Statutes

This section restates and amends the contents of present section 13. (By coincidence, it has the same section number as the present rule.) Section 13 previously stated that all telephone utilities must comply with the statutory provision requiring approval prior to discontinuing service. The amendment

states other statutory requirements with which all utilities must comply, and that the Commission has no authority to waive. TAM supports these amendments.

§ 14 Commission Review

This section states the provisions of former section 11 with minimal substantive change. (In the Notice it was numbered § 15). We have modified the proposal to make this section consistent with changes that we made to section 5.

§ 15 Waiver of Provisions of Rule

Section 16 is identical to former section 14.

Accordingly, we

O R D E R

Chapter 280 be amended as provided in the amended rule attached to this Order.

Dated at Augusta, Maine, this 10th day of June, 1997.

BY ORDER OF THE COMMISSION

_____
Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Hunt